Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

COEUR d'ALENE TRIBE, in its own right and as the beneficially interested party subject to the trusteeship of the UNITED STATES OF AMERICA; ERNEST L. STENSGAR, LAWRENCE ARIPA, MARGARET JOSE. DOMNICK CURLEY, AL GARRICK, NORMA PEONE and HENRY SIJOHN, individually, in their official capacity and on behalf of all enrolled members of COEUR D'ALENE TRIBE,

Cross Petitioners,

v.

STATE OF IDAHO; PHIL BATT, GOVERNOR; PETE CENARRUSA, SECRETARY OF STATE; ALAN G. LANCE, ATTORNEY GENERAL; J.D. WILLIAMS, CONTROLLER; ANNE FOX, SUPERINTENDENT OF PUBLIC INSTRUCTION; KEITH HIGGINSON, DIRECTOR, DEPT. OF WATER RESOURCES; each individually and in his official capacity; IDAHO STATE BOARD OF LAND COMMISSIONERS; and IDAHO STATE DEPARTMENT OF WATER RESOURCES,

Cross Respondents.

IN THE MATTER OF THE OWNERSHIP OF THE BEDS AND BANKS AND ALL WATERS OF ALL NAVIGABLE WATER COURSES WITHIN THE 1873 COEUR d'ALENE RESERVATION BOUNDARY.

Cross Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

CROSS PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Eleventh Amendment generally bars federal court jurisdiction over claims impacting the "sovereignty" of a state. *Blatchford v. Native Village of Noatak*, 501 U.S. 775 (1991). The Idaho Supreme Court has held quiet title actions regarding property in which the State of Idaho claims an interest asserts "no claim against the sovereignty" of the state. *Lyon v. State*, 283 P.2d 1105, 1106 (ID 1955).

The question presented here is whether the Eleventh Amendment bars a federal court from exercising jurisdiction it would otherwise have over a quiet title action regarding property in which an interest is claimed by a state whose "sovereignty" is not impacted by such quiet title actions.

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Cross Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

CROSS PETITION FOR WRIT OF CERTIORARI

The Coeur d'Alene Tribe and all other above-named respondents, cross petitioners hereby cross petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (State App. at 1) is reported at 42 F.3d 1244. The opinion of the District Court (State App. at 29) is reported at 798 F.Supp. 1443.

JURISDICTION

The Court of Appeals entered its judgment on December 9, 1994. The cross respondents' Petition for Certiorari was received on March 6, 1995. Jurisdiction of this court was timely invoked under 28 U.S.C. § 1254. This cross petition is timely filed pursuant to Supreme Court Rule 12.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eleventh Amendment of the United States Constitution provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

STATEMENT OF THE CASE

1. Record and Facts

This is an action by a federally recognized Indian Tribe and its leaders against a State, state agencies and state officers. At issue is ownership of the beds, banks and waters of various navigable watercourses. The relief requested below was to quiet title and for declaratory and injunctive relief. 28 U.S.C. §§ 1331 and 1362 conferred jurisdiction.

The State of Idaho and various state agencies and officials were Defendants below and are Cross Respondents in this Court.

The Coeur d'Alene Tribe and tribal officers were Plaintiffs below and are Cross Petitioners here. They will be referred to collectively as Tribe.

This case is before the Court on the skimpiest of records. There is only a Complaint, App. at 3-14 and a FRCP 12(b) Motion to Dismiss, App. at 15-18.

2. Proceedings Below

The proceedings in the District Court were heard on a FRCP 12(b) Motion to Dismiss, App. at 16-18. The District Court held the Eleventh Amendment precluded the Court from considering the Tribe's claim to quiet title and for other relief against the State and state agencies. The District Court held it did have jurisdiction over state officials if they were found to be violating federal law. The District Court then went to the merits of the case on the 12(b) motion, found no violation of federal law, and dismissed the Tribe's case. Petitioner's App. 29-49.

The Court of Appeals also held the Eleventh Amendment precluded the Court from considering the claims to quiet title and for other relief against the State and state agencies. As to state officials the Court of Appeals applied the *Ex Parte Young*, 209 U.S. 123 (1908) analysis and the three-part test of *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982). The Court held that a portion of the relief requested, enjoining state officials from interfering with tribal interests in the property, was not equivalent to payment of funds from the state treasury and therefore not barred by the Eleventh Amendment. The Court of Appeals carefully refrained from exercising jurisdiction to quiet or to otherwise adjudicate Petitioners' title. Petitioner App. at 4-23. The case was remanded back to the District Court for consideration of the various issues relating to declaratory and injunctive relief sought against the state officials.

3. Relation to *United States v. Idaho*[1]

Between the time this case was argued before the Court of Appeals and the decision, the United States, as trustee for the Tribe, sued the State of Idaho in federal court over the same basic matter that is at issue in this case. *United States v. Idaho*, No. 94-0328 (U.S.D.Ct. ID.), App. at 22-32.[2]

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[1] Various pleadings from *United States v. Idaho* were filed in *this* case as an appendix to a document titled Notice of Findings which was filed in the Court of Appeals. App. 19-61.

[2] The United State's Complaint is not as expansive as the Tribe's. The Complaint of the United States seeks to quiet title to only a portion of the beds and banks of Lake Coeur d'Alene,

The State of Idaho (Petitioner in this case) answered, admitted jurisdiction, and *counterclaimed*. App. at 33-44. The counterclaim was more expansive than the United States' Complaint.[3] App. at 41 § 6.6(1).

The Tribe moved to intervene (App. at 50-51) and filed a proposed Complaint which raised the issues raised in this case. App. at 52-61. That Motion is still pending in the District Court.

REASONS FOR GRANTING THE WRIT

1. Court of Appeals' decision conflicts with decisions of a state court of last resort and decisions of this Court. S.Ct. Rule 10.1(a)(c).

The Tribe strongly opposes the granting of certiorari in this case. If certiorari is granted, however, it is absolutely essential for a fair resolution of this case that the issue raised in this cross-petition also be considered. If the state's petition for certiorari is denied, this cross-petition should also properly be denied. S.Ct. Rule 13.5.

The decision of the Ninth Circuit below conflicts with the decision of a state court of last resort. The Idaho

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where the Tribe's Complaint includes a larger area, water, and aboriginal title.

[3] That Petitioners' Counterclaim asked the federal court for a judgment "quieting its title to the beds and banks of those portions of Lake Coeur d'Alene and the St. Joe River within the Coeur d'Alene Reservation." App. at 41 § 6.6(1). This placed at issue ownership of the entire lake because if it is held by the United States in trust for the Tribe it is "within the Coeur d'Alene Reservation."

Supreme Court, as the court of last resort in Idaho, has ruled that litigants in a quiet title proceeding pose no claim against the "sovereignty" of the State of Idaho.

> A suit to quiet title to land allegedly owned by appellants and to which the Board of Education of the State of Idaho allegedly asserted claim, is not a claim against the Board of Education, or the state to which it can impose sovereign immunity as a defense. (Citations omitted.).
>
> The appellants by the proceeding [to quiet title] are asserting no claims against sovereignty, but are attempting to retain that which they allegedly own.
>
> Hence the contention that such [quiet title] proceedings deprive the state, its officials or boards, of sovereign rights of immunity is without merit.

Lyon v. State, 283 P.2d 1105, 1106 (Id. 1955).

The Court of Appeals did not treat *Lyon* and its companion case of *Roddy v. State*, 139 P.2d 1005 (1943) as cases defining a limitation on the Petitioner's sovereignty. Instead it treated these as waiver of immunity cases regarding state court procedure. Petitioner App. at 7-8. The Court of Appeals then applied the rule that a state must specifically waive its Eleventh Amendment immunity, citing *Edelman v. Jordan*, 415 U.S. 651, 677 n.19 (1974), Petitioner App. at 8.

The error in the Court of Appeals' reasoning is that *Roddy* and *Lyon* are not waiver cases. They are cases which define one aspect of the state's sovereignty in a narrow and limited way.

Stated in its simplest terms the *Roddy* and *Lyon* holdings stand for the proposition that:

1) quiet title actions regarding property in which the state or state agencies claim an interest pose "no claim against the sovereignty" of the state;

2) the state cannot "interpose sovereignty as a defense"; and

3) there can never be an issue of waiver of a defense that cannot be raised.

Lyon and *Roddy* do not stand for a state law waiver of its own immunity in state court actions. Rather they stand for a state's sovereign right to decide what is part of its sovereignty and what is not. It is difficult to imagine a more basic state right in our system of federalism than a state's sovereign right to decide what is not part of its sovereignty. It is not for the federal judiciary to impose trappings of sovereignty on a state which the state itself chooses to reject.

This distinction is critical because it is protection of state sovereignty which forms the basis of the Eleventh Amendment doctrine as we now know it.

In *Blatchford v. Native Village of Noatak*, 501 U.S. 775 (1991) this Court made clear that concepts of state sovereignty and the limitation that sovereignty imposed on Article III courts was the basis of the current Eleventh Amendment doctrine.

> [T]he states enter the federal system with their sovereignty intact; that the judicial authority in Article III is limited by this sovereignty, and that a state will therefore not be subject to suit in

> federal court unless it has consented to suit, either expressly or in the "plan of convention."

Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991).

The Eleventh Amendment on its face does not bar this action. The Eleventh Amendment doctrine is based on the limit state sovereignty places on Article III courts. But since quiet title actions such as this one do not impact the sovereignty of the State, it necessarily follows that there is no limitation on the jurisdiction of the federal courts in this case. Since the federal court otherwise had jurisdiction, 28 U.S.C. §§ 1331, 1362, it was error to dismiss the action.

CONCLUSION

The State of Idaho has defined one aspect of its sovereignty in a narrow and limited way so that quiet title actions regarding property in which the State claims an interest present no claim against the sovereignty of the State. *Lyon, Roddy*. This Court has explained that the Eleventh Amendment Doctrine is grounded upon the limitation that state sovereignty places on the jurisdiction of Article III courts. Since quiet title actions present no claim against the sovereignty of the State, there is no Eleventh Amendment basis for limiting the jurisdiction of the federal court. The Court of Appeals' decision to the contrary is in conflict with *Roddy* and *Lyon* decisions of the State's court of last resort and in conflict with the *Blatchford* decision of this Court.

The decision of the Court of Appeals affirming the dismissal of the State, the state agencies and the quiet title action should be reversed. The case should be remanded for trial on the merits on all claims against all Defendants.

Respectfully submitted,

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